

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MONSANTO COMPANY and	)	
	)	
MONSANTO TECHNOLOGY LLC,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Cause No. 4:10-cv-2249 CEJ
	)	
ZEFERINO SAUCEDA,	)	
	)	
Defendant.	)	

**MONSANTO’S MOTION TO STRIKE DEFENDANT’S JURY DEMAND**

Plaintiffs Monsanto Company and Monsanto Technology LLC (“Monsanto”) move to strike Defendant’s Demand for Trial by Jury as untimely [doc #24]. In support, Monsanto states:

1. Monsanto filed its complaint on December 2, 2010. Defendant filed his answer on January 18, 2011, without asserting a jury demand. On June 24, 2011—about 5 months too late—Defendant filed a jury demand.
2. Federal Rule of Civil Procedure 38(b) requires that a jury demand be made “no later than fourteen days after the last pleading directed to the issue is served.” And “[a] failing on the part of a party to serve and file the demand within the [fourteen] day time limit constitutes a waiver of the right to a trial by jury.” *Freeborn v. Mak*, 270 F.Supp.2d 1064, 1066 (S.D. Iowa 2003).
3. “[T]he plain text of Rule 7(a) defines what constitutes a pleading for purposes of Rule 38.” *Burns v. Lawther*, 53 F.3d 1237, 1241 (11th Cir. 1995). Rule 7(a) provides that the following documents constitute pleadings: (1) a complaint; (2) an answer to a complaint; (3)

counterclaim designated as a counterclaim; (4) an answer to a cross claim; (5) a third party complaint; and (6) an answer to a third party complaint.

4. So, here, the “last pleading directed to the issue” was Defendant’s answer—filed on January 18, 2011. Therefore, Defendant was required to file his jury demand no later than February 1, 2011.

5. Because Defendant failed to file a timely jury demand, he waived his right to trial by jury. This Court must strike Defendant’s untimely jury demand.

WHEREFORE Plaintiffs Monsanto Company and Monsanto Technology LLC respectfully request that this Court strike Defendant’s demand for trial by jury and grant such other and further relief as it deems proper.

**Respectfully submitted,**

**THOMPSON COBURN LLP**

By /s/ Daniel C. Cox

Daniel C. Cox, #38902MO  
Jeffrey A. Masson, #60244MO  
Kevin M. Carnie Jr., #60979MO  
One US Bank Plaza  
St. Louis, Missouri 63101  
314-552-6000  
FAX 314-552-7000

*Attorneys for Plaintiffs Monsanto Company and  
Monsanto Technology LLC*

**CERTIFICATE OF SERVICE**

I certify that on this 28<sup>th</sup> day of June 2011, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

Charles Dunn  
1001 Main Street, Suite 204  
Lubbock, TX 79401

/s/ Daniel C. Cox \_\_\_\_\_